

LESLIE J. MYERS)	
Claimant)	
VS.)	
)	Docket No. 1,000,371
SALLEE, INC.)	
Respondent)	
AND)	
)	
KANSAS TRUCKERS RISK MGMT GROUP)	
Insurance Carrier)	

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2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

During the summer of 2001, claimant was working for respondent as a truck driver. Sometime between mid-July 2001 and August 11, 2001, claimant encountered a malfunctioning landing gear on a trailer. When jerking on the malfunctioning gear, claimant did not notice any unusual symptoms but the next day he had pain and stiffness in his neck and left shoulder.

Claimant first sought medical treatment on August 11, 2001, when he went to the emergency room of the Meade District Hospital. Claimant did not report that he was injured at work but, instead, reported that he had been moving furniture the day before. The history shown in the Meade District Hospital's records reads:

[H]ad neck surgery in March – moved furniture yesterday et developed (L) shoulder, neck et back pain. (L) arm feeling numb/tingling. Pain cont today . . . [without] relief.

On approximately September 21, 2001, claimant met with respondent and prepared an accident report indicating that he had been injured at work. Claimant believes he verbally notified respondent of the accidental injury earlier than that but he does not remember when. On the other hand, according to Sue Sallee, who is respondent's secretary/treasurer, dispatcher and bookkeeper, claimant did not notify respondent that he had been injured at work until filling out the September 2001 injury report.

Based upon the record compiled to date, the Board affirms the Judge's conclusion that claimant failed to prove that he injured himself while working for respondent. The Board also affirms the Judge's conclusion that claimant failed to prove he provided respondent with timely notice as required by K.S.A. 44-520. Under the Workers Compensation Act, injured workers are required to report their accidental injuries within 10 days of the accident unless there is just cause for failing to report within that period. At this juncture of the claim, claimant has failed to carry his burden of proof and, accordingly, the request for benefits was properly denied.

WHEREFORE, the Board affirms the January 25, 2002 Order Denying Compensation entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

c: Robert A. Levy, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director